IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION NO.735 OF 1982

THE HON'BLE MR. JUSTICE Y.B. BHATT:

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1. Whether Reporters of Local Papers may be allowed to see the judgement?

2. To be referred to the Reporter or not?

3. Whether their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

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Appearance:

Mr. S.M. Shah, advocate for the petitioners.
Mr. B.P. Tanna, advocate for the respondent.

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CORAM: Y.B. BHATT J.
Date of Decision: 14-12-1995

JUDGEMENT

1. The present revision is one under section 29(2) of the Bombay Rent Act (hereinafter referred to as 'the said Act'), filed by the original plaintiffs-landlords, wherein the respondent is the original defendant-tenant.

2. The landlord had filed a suit for eviction of his tenant on the ground that the tenant was in arrears of rent

for more than six months and that he has neglected to make payment of the same inspite of the statutory notice.

3. The defendant-tenant contested the suit by filing his written statement at Exh.13B. While denying the various allegations as regards he being in arrears of rent, he further contended that he was ready and willing to pay the rent due and further raised a dispute as to standard rent.

4. The trial court framed issues at Exh.21, wherein one of the issues was as regards the determination of standard rent in respect of the suit premises.

5. However, before the issues were raised, the matter took a different turn. The plaintiff filed an application Exh.16 dated 26th March 1979, specifically under section 11(4) of the said Act, and averred therein that the tenant is in arrears of rent amounting to Rs.1800/- for a period of 8 months, and that, therefore, the defendant should be called upon to pay or deposit the rent in the court forthwith, failing which consequential orders may be passed. The trial court passed an order below Exh.16 and directed the defendant-tenant to pay to the plaintiff or to deposit in the court the specified amount of Rs.1800/- on or before 17th December 1979, and further directed the defendant-tenant to continue to deposit the rent at the rate of Rs.40/- per month as and when the same becomes due. The order further directed that in case the defendant fails to comply with this former part of the order, he would not be permitted to appear in court or to defend the suit without the leave of the court.

6. The defendant-tenant apparently could not comply with the said order in time as specified in the original order. He, therefore, filed application Exhs.19 and 20 successively for extension of time to comply with the direction of making the deposit. The trial court extended the time for making the deposit upto 15th January 1980. However, on 15th January 1980 when the matter was taken up for framing issues, it was found that the defendant had failed to comply with the direction as to deposit and that therefore by virtue of the earlier order passed below Exh.16, his defence had automatically been struck off.

7. It is pertinent to note at this stage that the defendant tenant did not avail himself of the opportunity of applying to the court under the last part of the order below Exh.16, i.e. did not apply to the court for leave or liberty to defend the case, subject to such terms and conditions as the court may impose. It is pertinent to note that the orders specifically stated and contemplated that in case of non-deposit by the due date, the defence would be struck off

and the tenant would not be permitted to defend the case without the leave of the Court. The tenant was, therefore, aware that inspite of non-compliance with the direction as to deposit, he could still apply to the court for leave to defend, and the court may grant such leave subject to such terms and conditions as may appear to the court to be reasonable.

8. However, the tenant pursued a peculiar approach and gave an application Exh.22 by which he withdrew his dispute as to standard rent with the permission of the court. This was granted by the trial court. Consequently issue no.1 raised under exh.21 in the suit, pertaining to the determination of the standard rent, was deleted.

9. Thereafter the trial court recorded the evidence of the plaintiff and after evaluating the evidence on record, passed a decree of eviction in favour of the landlord and against the tenant.

11. The tenant, being aggrieved by the decree of eviction passed against him, preferred an appeal under section 29(1) of the said Act. The lower appellate court, after considering the submissions of the appellant, accepted the same and quashed and set aside the decree of the trial court and remanded the matter back to the trial court for redetermination, particularly on the question as to whether the case would be governed under section 12(3)(a) or 12(3)(b) of the said Act.

12. It is this order of the lower appellate court which has been challenged by the landlord in the present revision.

13. It must be noted in the first instance that the order of remand has been passed by the lower appellate court by holding that the order of the trial court below Exh.16 under section 11(4) of the Rent Act was without jurisdiction, inasmuch as it was a composite order, whereby the tenant was directed to deposit the specified amount by the specified date, and in case of noncompliance with the same his defence would be struck off and the tenant would not be permitted to defend the suit thereafter, without the leave of the court. In the opinion of the lower appellate court, such an order was without jurisdiction inasmuch as the same was outside the scope of section 11(4) of the said Act. According to the lower appellate court, the only proper course would have been to first direct the tenant to deposit a specified amount by a specified date, so as to give an opportunity to the tenant to apply for extension of time in case he is unable to make the deposit by the prescribed date, and in case the defendant is unable to make the deposit by the due date or the extended

date as the case may be, only then pass the consequential order of not permitting the defendant to defend the suit without the leave of the court. For taking such a view, the lower appellate court has relied upon a decision of a single Judge of this Court in the case of ASHWINKUMAR L. KESHARIA, reported at 18 (1981) GLT 241. No doubt, a plain reading of this decision would indicate that the ratio laid down in the said decision is to the effect that section 11(4) of the said Act contemplates two stages: the first being a direction to the tenant to pay up the specified amount by the specified date, and the second stage being to strike off the defence of the tenant in case of non-compliance with the first part of the order, and that these two stages cannot be merged in the form of a composite order. In other words, this decision apparently lays down the proposition that separate orders must be passed in respect of these two separate stages. This decision is specifically based upon an earlier decision of a Division Bench of this Court in the case of HARKISHANDAS CHUNNILAL CHOKSHI (AIR 1973 Gujarat 240).

14. The lower appellate court has also referred to and relied upon the aforesaid decision of the Division Bench of this Court.

15. However, what is material and relevant is that both the lower appellate court as also the learned Single Judge of this Court in his decision in 18 (1981) GLT 241 (supra) (with all due respect) has completely misread and misconstrued the scope, effect and the ratio laid down in the earlier Division Bench decision in the case of Harkishandas Chunnilal Chokshi (supra).

16. A plain reading of paragraphs 15, 16 and 16 of the Division Bench decision clearly lays down the proposition that section 11(4) of the said Act clearly contemplates two stages. The first stage would be where the tenant is directed to make deposit of a specified amount by a specified date, and the second stage would be to strike out his defence in case of non-compliance with the first part of the order and not permitting him to defend the suit without the leave of the court. However, while considering the two stages of the order which may be passed by a Rent Court under section 11(4), the Division Bench merely observed that it is open to the trial court to pass separate orders in succession in respect of the two stages contemplated by the said provision. What is pertinent and what must be noted is that the said decision nowhere lays down that a composite order, where both stages are merged, cannot be passed. On the contrary the Division Bench has observed that it is desirable that the tenant should have advance notice that in case he does not comply with the direction to deposit the specified amount by the specified

date, the consequences that would follow the non-compliance with such an order would be that his defence is likely to be struck off and thereafter he would not be permitted to defend the suit without the leave of the court. In order that the tenant should have advance notice of the consequences of non-compliance with the first part of the order, the Division Bench specifically held that it is both desirable and proper that the trial court should pass a composite order in respect of both stages contemplated by section 11(4) of the said Act.

17. It is, therefore, clear and obvious that the lower appellate court has completely misunderstood and misconstrued the ratio laid down in the case of Harkishandas Chunnilal Chokshi (supra). In the premises aforesaid it cannot be found that the order of the trial court passed below Exh.16 under section 11(4) of the said Act was without jurisdiction. Thus, the very basis of setting aside the trial court decree and remanding the matter back to the trial court falls to the ground. This revision is, therefore, liable to be allowed on this ground alone.

18. However, the lower appellate court has also taken resort of another submission of the tenant that the trial court has failed to consider whether the case would be covered under section 12(3)(a) or 12(3)(b) of the said Act. The appellate court, therefore, felt justified in remanding the matter to enable the trial court to decide on the facts of the case as to whether section 12(3)(a) or 12(3)(b) would apply. Clearly this ground for remanding the matter is also contrary to the well settled principles applicable to section 12(3)(a) of the said Act.

19. The Supreme Court has clearly laid down in the case of SHAH DHANSUKHLAL (AIR 1968 SC 1109) that if the tenant has not raised a dispute as to standard rent by making an application under section 11(3) of the said Act within the prescribed period, the tenant would not be entitled to the protection conferred by section 12(1) of the said Act. In other words, in order to legitimately raise a dispute as to standard rent, so as to take the case out of section 12(3)(a), such dispute must be raised by the tenant by filing an application under section 11(3) within the prescribed period.

19.1 Similarly the Supreme Court has laid down in the case of HARBANSLAL (AIR 1976 SC 2005) that in order to avoid the operation of section 12(3)(a) the tenant must raise a dispute as to standard rent within the prescribed period of 30 days, by way of an application under section 11(3) of the said Act, and that a mere contention taken in written statement for the purpose of raising a dispute as to standard rent, would not be sufficient to take the case out of section 12(3)(a) of the

said Act.

19.2 Obviously, therefore, the lower appellate court was clearly in error in holding that the trial court was required, on the facts and circumstances of the case, to investigate as to whether the same falls under section 12(3)(a) or 12(3)(b) of the said Act.

20. In the premises aforesaid, the judgement and decree of the lower appellate court is clearly not sustainable in law and is, therefore, quashed and set aside. Consequently the order of remand directing the case to be retried by the trial court is also quashed and set aside. The judgement and decree of the trial court is sustained.

21. As a result, the present revision is allowed. Rule is made absolute with no order as to costs.

22. At this stage learned counsel for the respondent-tenant submits that some reasonable time may be granted to the tenant to vacate the premises in question and suggests that 2 years time would be reasonable. Learned counsel for the petitioner has no serious contention in this regard. Accordingly the tenant is granted time upto 20th June 1997 to vacate the suit premises in question, on condition that he files an undertaking in this court on usual terms in this regard on or before 12th January 1996. It is clarified that if the undertaking as aforesaid is not filed by the due date or in case of breach of any of the terms and conditions contained in the said undertaking, the decree shall become executable forthwith.

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